

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langlely

Periodic Reporting
(Proposal Thirteen)

Docket No. RM2015-7

ORDER GRANTING MOTION
FOR ACCESS TO NON-PUBLIC MATERIAL

(Issued February 24, 2015)

Introduction. On February 18, 2015, United Parcel Service, Inc. (UPS) filed a motion pursuant to 39 C.F.R. §§ 3007.21 and 3007.40 seeking expedited access to Library Reference USPS–RM2015–7/NP1.¹ The Motion was unopposed. For the reasons discussed below, the Commission grants the Motion.

¹ United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Relevant to Proposal Thirteen Under Protective Conditions, February 18, 2015 (Motion).

Background. The Postal Service filed the library reference to which UPS seeks access in conjunction with its petition in this docket seeking approval of Proposal Thirteen.² The library reference was filed under seal, pursuant to a statement in a related notice which incorporates by reference a previous Application for Non-Public Treatment.³

Access rules. Commission rule 3007.40 governs access to non-public materials, including expedited access. It provides that any person may file a motion requesting access, and requires that the motion include a detailed statement providing justification for access, a list of relevant affiliations, and whether the party is affiliated with the delivery services, communications, or mailing industries. 39 C.F.R. §§ 3007.40(a)(1) and (a)(2). A party seeking expedited access may attach to the motion an executed copy of protective conditions. *Id.* at § 3007.40(b). Assuming the movant provides the executed copies, as well as actual notice of the motion to persons identified by the Postal Service, answers to an access motion are due within 3 days, rather than 7 days. *Id.* at § 3007.40(c).

The instant Motion; request for expedited treatment. UPS asserts that Library Reference USPS–RM2015–7/NP1 is directly relevant to this proposal, and that it has a substantial interest in the proposal. Motion at 2. It notes, among other things, that Cost Segment 7 consisted of \$11.6 billion costs in 2014. *Id.* It further observes that less than 5 percent of these costs were attributed to competitive products, and asserts that this "low level of cost attribution warrants close examination in light of Congress's directive in the Postal Accountability and Enhancement Act ("PAEA") that the Postal

² Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Change in Analytical Principles (Proposal Thirteen), December 11, 2014. *See also* Notice of Filing of USPS–RM2015–7/1, USPS–RM2015–7/NP1, and Application for Nonpublic Treatment, December 11, 2014 (Application). The Application incorporates by reference the Application for Non-Public Treatment of Materials contained in Docket No. ACR2013, United States Postal Service FY 2013 Annual Compliance Report, December 27, 2013, Attachment Two.

³ Proposal Thirteen concerns Cost Segment 7, city delivery carriers–street time.

Service's competitive products pay their own costs, without subsidy from market-dominant products." *Id.*

More specifically, UPS states that the library reference contains data that relate to how the Postal Service proposes to calculate the cost impacts of competitive products within "this important cost segment" and provides a "crosswalk" between the masked ZIP Codes in the public files and the actual ZIP Codes used in the study. *Id.* It maintains that access to the crosswalk is necessary for UPS's consultants to analyze and assess the study data. *Id.* In addition, UPS states that the Postal Service does not object to this request. *Id.* at 3.

UPS states that in addition to agreeing to the Commission's standard protective conditions, which prohibit sharing protected materials with persons involved in competitive decision-making, it agrees to limit access to the library reference to its outside counsel and consultants. *Id.* UPS states that each person seeking access to the library reference (identified in Exhibit 1 to the Motion) has executed a copy of the Commission's standard protective conditions, and that these copies are attached to its Motion (in Appendix A).⁴ *Id.* UPS states that the Postal Service has not identified any third parties with a proprietary interest in the requested information. *Id.* It also states that it has conferred with the Postal Service concerning the request for access, and is authorized to report that the Postal Service does not object. *Id.* at 1.

Standard of review. The standard of review for the Motion is found in Commission rule 3007.42, and requires balancing the interests of the parties based on Federal Rule of Civil Procedure (FRCP) 26(c). 39 C.F.R. § 3007.42. Federal Rule of Civil Procedure 27(c) deals with protective orders, including the terms of disclosure. These include requiring that confidential commercial information be revealed only in a specified way. FRCP 26(c)(g). A movant must also satisfy the requirements of Commission rule 3007.40 (addressed above). Following the filing of answers, if any, the Commission is to issue an order allowing or denying access and setting forth the

⁴ UPS seeks access for twelve persons. See Motion, Exhibit 1 at 1.

appropriate protective conditions, if any, to be accorded to the non-public materials or, if the Postal Service or third party does not contest access, issue an order allowing access subject to the agreed-upon protective conditions. 39 C.F.R. §§ 3007.40(d)(1) and (d)(2).

Commission analysis. The Commission finds that the Motion fully addresses the requirements of Commission rule 3007.40, including those in Commission rule 3007.40(b) that pertain to motions seeking expedited treatment. Moreover, the Motion provides sufficient information to conclude that the balancing test in FRCP 26(c) has been satisfied. No person has filed an answer opposing (or otherwise addressing) the Motion, and the Postal Service does not object to granting access. Accordingly, the Commission concludes that it is appropriate, pursuant to 39 C.F.R. § 3007.40(d)(2), to grant expedited access to the persons identified in Exhibit 1 of the Motion who have agreed to the protective conditions identified in the executed the copies included in Appendix A of the Motion.

It is ordered:

1. United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Relevant to Relevant to Proposal Thirteen Under Protective Conditions is granted.

2. Effective upon issuance of this Order, the twelve persons identified in Exhibit 1 of United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Relevant to Relevant to Proposal Thirteen Under Protective Conditions whose executed copies of protective conditions are included in Appendix A of the referenced Motion are granted access to Library Reference USPS–RM2015–7/NP1.

By the Commission.

Shoshana M. Grove
Secretary